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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,799	07/19/2002	Jacinta Farn	20-02	3899
23713	7590	07/07/2005	EXAMINER	
GREENLEE WINNER AND SULLIVAN P C			BASKAR, PADMAVATHI	
4875 PEARL EAST CIRCLE			ART UNIT	
SUITE 200			PAPER NUMBER	
BOULDER, CO 80301			1645	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/069,799	<b>Applicant(s)</b> FARN ET AL.	
	<b>Examiner</b> Padmavathi v. Baskar	<b>Art Unit</b> 1645	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED \_\_\_\_\_ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 18 April 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: 63 and 66.  
 Claim(s) objected to: NONE.  
 Claim(s) rejected: 72.  
 Claim(s) withdrawn from consideration: NONE.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_

  
**MARK NAVARRO**  
**PRIMARY EXAMINER**

1. Applicant's amendment filed on 3/18/05 is entered.

## Status of Claims

2. Claims 1-62, 64-65, 67-71 and 73-84 have been canceled  
Claims 63 and 72 have been amended.  
Claims 63, 66 and 72 are pending in the application.
3. In view of amendment to the claims, the rejections under 35 U.S.C. 112, first paragraph and art rejections of record for claims 63 and 66 are withdrawn.
4. The rejection of claim 72 under 35 U.S.C. 112 first paragraph is maintained as set forth in the previous office action.  
Applicant's arguments have been considered but found to be not persuasive.

Applicant states that overlapping peptides are well known and once the amino acid sequence is known, it is routine in the art to synthesize a series of overlapping peptides and immunize the animals for producing antibodies and screen the peptides for specificity for the given peptide.

The examiner disagrees with the applicant because the ability of a given oligopeptide to elicit antibody responses that react with the native molecule currently is unpredictable at best. One reason is that oligopeptides only have the ability to represent linear or "continuous" epitopes. "Discontinuous" epitopes are composed of sequences from throughout an antigen and rely on folding of the protein to bring the sequences into close proximity of one another. Clearly, oligopeptides are incapable of representing such epitopes. Moreover, even though continuous epitopes are structurally less complicated than discontinuous ones, there remains only a poor understanding of how the immune system recognizes and responds to these antigenic species.

5. The rejection of claim 72 under 35 U.S.C. 102(e) as being anticipated by Campos et al U.s.patent: 6,096,320 is maintained as set forth in the previous office action.

The rejection of claim 72 under 35 U.S.C. Billson, F. M. et al. (1994) FEMS Microbiology 124:69-73 is maintained as set forth in the previous office action.

Applicant states that Campos reference teaches leukotoxin of P.haemolytica and Billson discloses haemolysin antigen from the M.bovis UQV148 NF and thus do not disclose recombinant polypeptide of M.bovis or SEQ.ID.NO:5 fragments.

The examiner disagrees with the applicant because the limitations which applicant is arguing about, are not set forth in the claim 72. In addition the prior art fragment is 100% identical to the claimed fragments. Therefore, the rejections for claim 72 are maintained.

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272 0853. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi week.  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Padma Baskar Ph.D.